IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.10360 OF 2004

Rajaram Sitaram Rahate).. Petitioner

Versus

Vile Parle Mahila Sangh).. Respondent

Mr.Neel Helekar for the Petitioner.

Mr.T.R.Yadav for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 21ST MARCH 2005

P.C.:

. This Petition challenges the order dated 16th August 2004 passed by the IInd Labour Court, Mumbai in Application (IDA) No.227 of 2000 filed under Section 33C(2) of the Industrial Disputes Act, 1947. By Complaint (ULP) No.1439 of 1995, the Petitioner had sought a declaration that the Respondent had engaged in an unfair labour practice and had also sought a direction from the Industrial Court to continue him as a permanent employee with all wages and other benefits which are available to regular employees of the Respondent. The Industrial Court by its order dated 19th March 2003 held that an unfair labour practice had been committed under Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair

Labour Practices Act, 1971. It further directed the Respondent to make the Petitioner permanent with effect from 1st March 1999 although the Petitioner had sought permanency from the year 1993.

2. A Writ Petition has been filed in this Court challenging the direction to grant permanency only from 1999 and not with effect from 1st February 1993 as claimed in the Complaint. That Writ Petition is pending adjudication before this Court. In the meantime, Application (IDA) No.227 of 2000 came to be filed before the Labour Court claiming wages on the basis that the Petitioner was a permanent workman. These wages were sought for the period from 1st January 1993 to 31st December 1998, which are the wages claimed in the Complaint consequent upon the petitioner being declared a permanent workman. It appears that the application was thereafter amended and a prayer was made to grant the amount i.e. difference in wages right upto December 2002.

3. The Labour Court, in my view, has rightly rejected the application filed by the Petitioner as being barred under Section 59. Once the Industrial Court had granted permanency with effect from 1999 onwards, the Labour Court could not under Section 33C(2) decide whether the difference in wages could be paid to the

Petitioner, on the basis that he was a permanent workman, with effect from 1st February 1993 to 31st December 1998. A Writ Petition has already been filed challenging this finding of the Industrial Court that the permanency ought to be granted only from 1999. The Labour Court while rejecting the present application has committed no error of law as two parallel proceedings for the same relief cannot be allowed to exist as there is bar under Section 59 of the Act. In view of this, Writ Petition dismissed. However, the Petitioner is at liberty to take such steps as are necessary to claim difference in wages, if not already paid, in accordance with the order of the Industrial Court conferring permanency with effect from 1999 onwards.

4. Certified copy expedited.